

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:

Phibro-Tech, Inc.
8851 Dice Road
Santa Fe Springs, California 90670

ID No. CAD 008 488 025
Respondent

Docket HWCA 00/01-4001

CONSENT ORDER

Health and Safety Code
Section 25187

INTRODUCTION

The California Department of Toxic Substances Control (Department) and Phibro-Tech, Inc. (Respondent) enter into this Consent Order and agree as follows:

- 1.1. Site. Respondent generates, handles, treats, stores, and/or disposes of hazardous waste at 8851 Dice Road, Santa Fe Springs, California (Site).
- 1.2. Inspection. The Department inspected the Site on May 30, 2000 through June 2, 2000, September 18, 2000, and June 7, 8, and 15, 2001.
- 1.3. Permit Status. The Department authorized Respondent to manage hazardous waste by issuing Hazardous Waste Facility Permit (HWFP) on July 29, 1991. The Respondent submitted a new Part A and B Application in January of 1996. On February 28, 1996, the Department allowed Respondent to continue to operate under the conditions of the July 29, 1991 permit. The Permit expired on July 29, 1996.
- 1.4. Jurisdiction. Health and Safety Code (Health & Saf. Code) section 25187 authorizes the Department to order action necessary to correct violations and assess a penalty when the Department determines that any person has violated specified provisions

of the Health and Safety Code or any permit, rule, regulation, standard, or requirement issued or adopted pursuant thereto.

1.5. Dispute. A dispute exists regarding the violations alleged below. The parties wish to avoid the expense of litigation and to ensure prompt compliance. Nothing in this Consent Order shall be construed as an admission of wrong-doing.

1.6. Full Settlement. This Consent Order shall constitute full settlement of the violations alleged in the Summaries of Violations dated June 6, 2000, July 20, 2000, September 18, 2000, January 11, 2001, and June 15, 2001, but does not limit the Department from taking appropriate enforcement action concerning other violations.

VIOLATIONS ALLEGED

2. The Department alleges the following violations from the Summaries of Violations referenced above in paragraph 1.6:

2.1. Respondent violated Health & Saf. Code, § 25202, California Code of Regulations (Cal. Code Regs.), title 22, section 66270.4(b), and section III.C.2.f of the HWFP, in that, at the time of the May through June 2000 inspections, Respondent was storing hazardous waste in approximately 8,932 55-gallon drums. The facility was authorized to store 3,146 55-gallon drums; therefore, Respondent was in excess of the authorized capacity by 5,786 55-gallon drums. Respondent stored waste in excess of the facility's authorized capacity on at least 167 days from on or about December 13, 1999 through June 2, 2000.

2.2. Respondent violated Health & Saf. Code, §§ 25201(a) and 25202, Cal. Code Regs., tit. 22, § 66270.4, and section III.C.2.a of the HWFP, in that during the May through June 2000 inspections, Department personnel observed Respondent storing containers of hazardous waste in areas not authorized by its permit or by the Department, including the staging areas and the facility yard on at least 167 days from on or about December 13, 1999 through June 2, 2000.

2.3. Respondent violated Health & Saf. Code, § 25202, Cal. Code Regs., tit. 22, §§ 66264.35 and 66270.4, and section III.Q of the HWFP, in that, during the May through June 2000 inspections, and the September 2000 inspection, Respondent failed to maintain adequate aisle space in areas of the facility by failing to: maintain sufficient space for a person to determine if an individual drum was leaking; or to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of facility operation in an emergency.

2.4. Respondent violated Health & Saf. Code, § 25202, Cal. Code Regs., tit. 22, §§ 66270.4 and 66264.193(c)(2), and section III.C.3.b(1) of the HWFP, in that, during the May through June 2000 inspections, Respondent failed to maintain the containment base required by the permit, by allowing the floor and berm walls in the copper oxide area to corrode and crack; the floor of the ferric chloride recovery area to crack; and a portion of the fiberglass coating of the secondary containment in the ferric chloride recovery area to be removed.

2.5. Respondent violated Health & Saf. Code, § 25202, Cal. Code Regs., tit. 22, §§ 66270.4, 66264.175(b) and 66264.193, and section III.C.3.b(1) of the HWFP, in that, during the June 2001 inspections, Respondent again failed to maintain the containment base required by the permit and was storing hazardous wastes without the adequate containment. The secondary containment of ERS #1, tank farms C and J, and the wastewater treatment area were cracked or etched away.

2.6. Respondent violated Health & Saf. Code, § 25202, Cal. Code Regs. tit. 22, §§ 66270.4, and 66264.175(b)(5) and section III.C.2.j(3) of the HWFP, in that during the May through June 2000 inspections, Respondent stored hazardous wastes without adequate containment, by allowing liquid to be present in, and overflowing from, the containment and collection areas. These liquids were not removed within 24 hours.

2.7. Respondent violated Health & Saf. Code, § 25202, Cal. Code Regs., tit. 22, §§ 66270.4, 66264.175 and 66264.196(b)(3)(B), and section III.C.2.j(3) of the HWFP, in that, during the June 2001 inspections liquid was present in the containment area of tank farm C and the wastewater treatment area for over 24 hours. These liquids were present in, or overflowing from collection areas and were not removed within 24 hours.

2.8. Respondent violated Health & Saf. Code, § 25202, Cal. Code Regs. tit. 22, §§ 66270.4 and 66264.15(c), and section III.M.6 of the HWFP in that for each week between March 30 and May 19, 2000, inclusive, various deteriorating or malfunctioning conditions that were reflected on Respondent's weekly inspection reports remained unremedied.

2.9. Respondent violated Health & Saf. Code, § 25202, Cal. Code Regs. tit. 22, §§ 66270.4 and 66264.73(b)(2), and section III.R.2.a(1) of the HWFP, in that, on or about December 13, 1999 through May 31, 2000, Respondent's operating record omitted information regarding the methods and locations of storage of hazardous wastes.

2.10. Respondent violated Health & Saf. Code, § 25202, Cal. Code Regs., tit. 22, § 66270.4, and section III.C.2.j(2) of the HWFP, in that, during the September 2000 inspection, the facility's temporary secondary containment for unpermitted storage areas did not meet the HWFP sections requirements.

2.11. Respondent violated Health & Saf. Code, § 25202, Cal. Code Regs., tit. 22, § 66270.4, and sections II.G.11 and II.G.13 of the HWFP, in that Respondent failed to give the Department advance notice of its anticipated noncompliance or failed to report its noncompliance at any time between December 1999, and the May through June 2000 inspections.

2.12. Respondent violated Health & Saf. Code, § 25188, and paragraph 6.3 of the Consent Agreement and Order executed on Respondent's behalf on or about December 7, 1999, and on the Department's behalf on or about December 27, 1999 (the "1999 Consent Order"), in that for at least 167 days following Respondent's execution of the 1999 Consent Order, beginning within a week of that date, Respondent continuously stored hazardous waste outside permitted storage areas.

2.13. Respondent violated Health & Saf. Code, § 25188, and paragraph 6.6 of the 1999 Consent Order in that on numerous occasions following Respondent's execution of the 1999 Consent Order, Respondent stored, transferred, loaded and/or unloaded

hazardous waste at locations where the secondary containment was inadequate to prevent hazardous waste from entering the soil.

2.14. Respondent violated Health & Saf. Code, § 25188, and paragraph 9.3.3 of the 2000 Consent Order executed by and between Respondent and the Department on or about July 14, 2000 (the “2000 Consent Order”), in that following the effective date of that Order, Respondent failed to maintain 24 inches of aisle space for five tote bins filled with hazardous waste.

2.15. Respondent violated Health & Saf. Code, § 25188, and paragraph 9.3.2 of the 2000 Consent Order, in that following the effective date of that Consent Order, Respondent failed to utilize an adequate temporary secondary containment system for drums of waste stored in the temporary storage areas, and failed to utilize any secondary containment system for five tote bins

2.16. Respondent violated Health & Saf. Code, § 25202, and Cal. Code Regs., tit. 22, § 66264.175(b), in that during the September 2000 inspection, the Department found that the temporary containment had been inadequate.

2.17 Respondent violated Cal. Code Regs., tit. 22, § 66264.31, in that each of the conditions set forth above in paragraphs 2.1 through 2.16 constituted a failure to maintain and operate the facility so as to minimize the possibility of a release of hazardous waste to the air, soil or surface water that threatens human health or the environment.

SCHEDULE FOR COMPLIANCE

3. Based on the foregoing Determination of Violations, IT IS HEREBY ORDERED THAT:

3.1 The Respondent shall immediately comply with all requirements of the HWFP, the 1999 Consent Agreement and Order and the 2000 Consent Order.

3.2 Immediately, and for a period thereafter of not less than five years, Respondent shall maintain this Consent Order as part of its operating record.

3.3 Notwithstanding, and in addition to, any other notification or reporting requirements to which Respondent is subject by virtue of statute, regulation, or otherwise, Respondent shall report any violation or lapse in compliance of any element of this Schedule for Compliance. Such report shall cite the docket number of this order and shall be made to the persons identified in paragraph 3.4 below not later than thirty days after the commencement of the violation or lapse in compliance.

3.4 Submittals. All submittals from Respondent pursuant to this Consent Order shall be sent to:

Ms. Nennet V. Alvarez, Chief
Cypress Branch
Statewide Compliance Division
Department of Toxic Substances Control
5796 Corporate Avenue
Cypress, California 90630

3.5 Communications. All approvals and decisions of the Department made regarding submittals and notifications shall be communicated to Respondent in writing by the Branch Chief, Department of Toxic Substances Control, or his/her designee. No informal advice, guidance, suggestions, or comments by the Department regarding

reports, plans, specifications, schedules, or any other writings by Respondent shall be construed to relieve Respondent of its obligation to obtain such formal approvals as may be required.

3.6 Department Review and Approval. If the Department determines that any report, plan, schedule, or other document submitted for approval pursuant to this Consent Order fails to comply with the Order or fails to protect public health or safety or the environment, the Department may return the document to Respondent with recommended changes and a date by which Respondent must submit to the Department a revised document incorporating the recommended changes.

3.7 Compliance with Applicable Laws. Respondent shall carry out this Consent Order in compliance with all local, State, and federal requirements, including but not limited to requirements to obtain permits and to assure worker safety.

3.8 Endangerment during Implementation. In the event that the Department determines that any circumstance or activity (whether or not pursued in compliance with this Consent Order) creates an imminent or substantial endangerment to the health or welfare of people on the site or in the surrounding area or to the environment, the Department may order Respondent to stop further implementation of this Consent Order for such period of time as needed to abate the endangerment. Any deadline in this Consent Order directly affected by a Stop Work Order under this section shall be extended for the term of such Stop Work Order.

3.9 Liability. Nothing in this Consent Order shall constitute or be construed as a satisfaction or release from liability for any conditions or claims arising as a result of past,

current, or future operations of Respondent, except as provided in this Consent Order.

Notwithstanding compliance with the terms of this Consent Order, Respondent may be required to take further actions as are necessary to protect public health or welfare or the environment.

3.10 Site Access. Access to the Site shall be provided at all reasonable times to employees, contractors, and consultants of the Department, and any agency having jurisdiction. Nothing in this Consent Order is intended to limit in any way the right of entry or inspection that any agency may otherwise have by operation of any law. The Department and its authorized representatives may enter and move freely about all property at the Site at all reasonable times for purposes including but not limited to: inspecting records, operating logs, and contracts relating to the Site; reviewing the progress of Respondent in carrying out the terms of this Consent Order; and conducting such tests as the Department may deem necessary. Respondent shall permit such persons to inspect and copy all records, documents, and other writings, including all sampling and monitoring data, in any way pertaining to work undertaken pursuant to this Consent Order.

3.11 Sampling, Data, and Document Availability. Respondent shall permit the Department and its authorized representatives to inspect and copy all sampling, testing, monitoring, and other data generated by Respondent or on Respondent's behalf, in any way pertaining to work undertaken pursuant to this Consent Order. Respondent shall allow the Department and its authorized representatives to take duplicates of any samples collected by Respondent pursuant to this Consent Order. Respondent shall maintain a central depository of the data, reports, and other documents prepared pursuant to this

Consent Order. All such data, reports, and other documents shall be preserved by Respondent for a minimum of six years after the conclusion of all activities under this Consent Order. If the Department requests that some or all of these documents be preserved for a longer period of time, Respondent shall either comply with that request, deliver the documents to the Department, or permit the Department to copy the documents prior to destruction. Respondent shall notify the Department in writing at least six months prior to destroying any documents prepared pursuant to this Consent Order.

3.12 Government Liabilities. The Department shall not be liable for injuries or damages to persons or property resulting from acts or omissions by Respondent or related parties specified in paragraph 4.2, in carrying out activities pursuant to this Consent Order, nor shall the Department be held as a party to any contract entered into by Respondent or its agents in carrying out activities pursuant to this Consent Order.

3.13 Incorporation of Plans and Reports. All plans, schedules, and reports that require Department approval and are submitted by Respondent pursuant to this Consent Order are incorporated in this Consent Order upon approval by the Department.

3.14 Extension Requests. If Respondent is unable to perform any activity or submit any document within the time required under this Consent Order, the Respondent may, prior to expiration of the time, request an extension of time in writing. The extension request shall include a justification for the delay.

3.15 Extension Approvals. If the Department determines that good cause exists for an extension, it will grant the request and specify in writing a new compliance schedule.

OTHER PROVISIONS

4.0 Additional Enforcement Actions. By agreeing to this Consent Order, the Department does not waive the right to take further enforcement actions, except to the extent provided in this Consent Order.

4.1 Penalties for Noncompliance. Failure to comply with the terms of this Consent Order may subject Respondent to civil penalties and/or punitive damages for any costs incurred by the Department or other government agencies as a result of such failure, as provided by Health & Saf. Code, § 25188 and other applicable provisions of law.

4.2 Parties Bound. This Consent Order shall apply to and be binding upon Respondent and its officers, directors, agents, employees, contractors, consultants, receivers, trustees, successors, and assignees, including but not limited to individuals, partners, and subsidiary and parent corporations, and upon the Department and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Consent Order.

4.3 Integration. This agreement constitutes the entire agreement between the parties and may not be amended, supplemented, or modified, except as provided in this agreement.

4.4 Compliance with Waste Discharge Requirements. Respondent shall comply with all applicable waste discharge requirements issued by the State Water Resources Control Board or a California Regional Water Quality Control Board.

PENALTY

5.0 Respondent shall pay the Department the total sum of \$425,000, which includes \$25,799.85 as reimbursement of the Department's costs, payable as follows:

5.1 An initial payment of \$50,000 is due within thirty (30) days of the effective date of this Consent Order.

5.2 The remaining balance of \$375,000 shall be payable in five annual installments. These payments are due as follows: \$60,000 due October 1, 2004; \$70,000 due October 1, 2005; \$75,000 due October 1, 2006; \$85,000 due October 1, 2007; and the final payment of \$85,000 due October 1, 2008.

5.3 In the event that any payment is not received at the address set forth below on or before the tenth day of the month in which it is due, the Department has the discretion to require payment of the outstanding balance within thirty (30) days.

5.4 Respondent's check shall be made payable to Department of Toxic Substances Control, and shall identify the Respondent and Docket Number as shown in the heading of this Consent Order. Respondent shall deliver the payment together with the attached Payment Voucher to:

Department of Toxic Substances Control
Accounting Office
1001 I Street, 21st floor
P. O. Box 806
Sacramento, California 95812-0806

A photocopy of the check shall be sent:

Ms. Nennet V. Alvarez, Chief
Cypress Branch
Statewide Compliance Division
Department of Toxic Substances Control
5796 Corporate Avenue
Cypress, California 90630

Mr. James J. Grace, Staff Counsel
Office of Legal Counsel
Department of Toxic Substances Control
1001 I Street, 23rd floor
P. O. Box 806
Sacramento, California 95812-0806

5.5 If Respondent fails to make payment as provided above, Respondent agrees to pay interest at the rate established pursuant to Health & Saf. Code, § 25360.1 and to pay all costs incurred by the Department in pursuing collection including attorney's fees.

RIGHT TO A HEARING

6. Respondent waives any right to a hearing in this matter.

EFFECTIVE DATE

7. The effective date of this Consent Order is the date it is signed by the Department.

Dated: 10/01/2003

Respondent

Original signed by Dwight Glover
PHIBRO-TECH, INC.
Dwight Glover, President

Dated: 10/09/2003

Original signed by Kim F. Wilhelm
Kim F. Wilhelm, Chief
Statewide Compliance Division
Department of Toxic Substances Control